

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STEPHEN J. HALE, ET AL.,
v.

Appellant-Respondents

COTTRELL, INC., ET AL.,

Respondent-Appellants

AUTO HANDLING CORPORATION AND
PACIFIC MOTOR TRUCKING COMPANY.

Respondents

DOCKET NUMBER WD76726 and WD76765

DATE: December 30, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable James Dale Youngs, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STEPHEN J. HALE, ET AL., Appellant-Respondents, v. COTTRELL, INC., ET AL.,
Respondent-Appellants, AUTO HANDLING CORPORATION AND PACIFIC MOTOR
TRUCKING COMPANY, Respondents.

WD76726 and WD76765

Jackson County

Before Division One Judges: Newton, P.J., Hardwick, and Gabbert, JJ.

In 1996, Hale's lower back was injured in a work-related accident with a produce truck driver. Hale filed a workers' compensation claim. Mirkin, the employer's doctor, and McGinty, Hale's doctor, issued competing medical opinions about the nature and extent of Hale's back injury, based on x-ray results and the treatments that Hale had received. Mirkin found that the injury had resolved, but McGinty found that Hale was permanently partially disabled. In 1998, Hale and the employer settled the claim. In 2001, Hale and his wife filed a civil suit against his employer's insurance company and the negligent driver's employer, claiming that the 1996 injury was permanent and progressive. In 2004, the case was dismissed, and Hale obtained the litigation file. In 2005, Hale sustained an injury to the same area while operating a Cottrell rig that had been maintained by AHC and PMT. In 2006, Hale employed new counsel to represent him in a new workers' compensation claim. In 2007, the Hales employed other counsel and sued Cottrell, AHC, PMT, and several other defendants for damages.

In 2007, the defendants requested medical records concerning the 1996 injury. The Hales maintained that the injuries were different and objected to such requests. The defendants unsuccessfully attempted to obtain the hospital records from a different source. In 2008, Hale was deposed twice and answered questions about the nature and extent of the 1996 injury and the whereabouts of any medical records related to the 1996 injury or the previous litigation file. In 2009, the Hales supplemented their discovery response with records from a treating physician for the 1996 injury. In 2010, Hale produced Mirkin's report. Neither McGinty's report nor the hospital records were produced.

In March 2010, a jury trial commenced against Cottrell, AHC, and PMT; a mistrial was declared after Hale experienced an unrelated medical emergency. A retrial was set for March 2011. However, the defendants discovered that the Hales' attorneys had McGinty's report in their possession before the 2010 trial and failed to produce it. The defendants sought dismissal of the claims for the violation of the discovery rules. The trial court continued the trial. Subsequently, the defendants filed another motion to dismiss, but on the ground that the Hales were judicially estopped from taking a contrary position to their previous one. After additional depositions, the defendants discovered that the Hales and their attorneys had the hospital records and McGinty's report at the time of discovery and failed to disclose them. The defendants filed a motion to dismiss the petition, requesting that the trial court invoke its inherent powers and dismiss the case because the Hales and their attorneys committed fraud on the court.

The trial court invoked its inherent powers and dismissed the case with prejudice on the ground that the Hales, aided by their attorneys, committed fraud on the trial court. It also denied Cottrell's request for attorney fees. Both parties appeal.

AFFIRMED.

Division One holds:

On appeal, the Hales raise five points. We address the points out of order for ease of discussion. In the third point, the Hales argue that the dismissal was improper because certain prerequisites to impose sanctions for a rule violation were not met. A trial court may use its inherent powers to sanction when a party acts in bad faith, and generally, is limited to situations where the court needs to protect the judicial integrity. A court that decides to dismiss a case using its inherent powers rather than finding a violation of a discovery rule does not need to meet the prerequisites of discovery rules. The third point is denied.

In the fifth point, the Hales argue that the dismissal was improper because the invocation of the court's inherent powers was not reasonably necessary to protect the court. The court believed that the discovery rules might not have adequately addressed the failure to disclose the medical records because, in opposition to the motion to dismiss, the Hales questioned whether certain procedural rules to request the medical records were satisfied. Yet the court was convinced that they committed bad faith conduct, specifically fraud on the court, in concealing medical records from the defendants. Medical records are important to the truth-seeking process such that concealing them threatens judicial integrity. In these circumstances, we cannot find that the trial court abused its discretion in deciding to use its inherent powers to dismiss the case in order to protect the legal system. The fifth point is denied.

In the first and second points, the Hales argue that there is no clear and convincing evidence that they committed fraud on the court or acted in bad faith with an actual intent to mislead or deceive another because neither the law nor the record supports such findings. Bad faith conduct involves actual intent to mislead or deceive another. Fraud on the court is an example of bad faith conduct. Concealing certain medical records as part of a scheme to preclude the defense from challenging the nature and extent of claimed injuries constitutes fraud on the court, and demonstrates bad faith conduct, at the very least.

In challenging the record, the Hales claim that legitimate reasons can be attributed to the statements to defeat a deceitful intent behind them. Intent is a question of fact, and we cannot consider contrary inferences under our standard of review. Moreover, Hale did not submit an affidavit explaining his behavior. The trial court's findings of Hale's false statements are supported by substantial and competent evidence. The Hales also argue that the statements were not material. The statements were material because they related to the causation issue that the Hales had the burden to prove to prevail on their claims. The first and second points are denied.

In the fourth point, the Hales argue that the defendants were not prejudiced by the failure to disclose the medical records because the 1996 injury was disclosed and the role of McGinty as a treating physician or an examining physician was known before trial. The trial court found that the fraud on the court hampered the defense. The record shows that the defendants' experts were deprived of the opportunity to use the hospital records from the 1996 injury and McGinty's competing report to challenge the Hales' expert evidence about Hale's condition prior and subsequent to the 2005 incident. The hospital records and McGinty's report support a theory of progression of the preexisting condition over nine years as the source of the herniated disc and the pain that necessitated the surgeries. The fourth point is denied.

On appeal, Cottrell raises one point. Cottrell claims the trial court abused its discretion in failing to award attorney fees. The trial court had the discretion to award attorney fees as a sanction. The trial court denied attorney fees because it dismissed the Hales' petition. We determine its decision to be reasonable, and do not find an abuse of discretion. Cottrell's sole point is denied.

Therefore, we affirm.

Opinion by Thomas H. Newton, Presiding Judge

December 30, 2014

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